IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

J U D G M E N T

S.B. CIVIL FIRST APPEAL NO.16/2000
Bherulal Bhandari Vs. Smt. Taru Lata

Against judgment and decree dated 04.10.1999 passed by District Judge, Udaipur in Civil Original Suit No. 141/96- Bherulal Bhandari Vs. Smt. Tarulata.

DATE OF PRONOUNCEMENT OF JUDGMENT:: 17TH January,2006.

PRESENT

HON'BLE MR.JUSTICE SATYA PRAKASH PATHAK

Mr. Jitendra Chopra for appellant.
Mr. M. Aslam for Mr. Manish Shishodia for respondent.

BY THE COURT:

This appeal under Sec.96 CPC is directed against the judgment and decree dated 04.10.1999 passed by District Judge, Udaipur in Civil Original Suit No. 141/96- Bherulal Bhandari Vs. Smt. Tarulata, whereby the learned trial Court has dismissed the suit for ejection and recovery of

rent filed by plaintiff-appellant.

The plaintiff filed the aforesaid civil suit with the averments in the plaint that he had rented out some portions of his house to the husband of defendant in the year 1990 on monthly rent of Rs.1870/-, however as the relations between the tenanted spouses were not cordial and they were facing financial crisis, on defendant's opening a school in the rented premises he did not object to it. It is further averred that the husband of defendant left her in the year 1992 and started living somewhere else but as the children of defendant grew up and the rented premises was not sufficient to meet the needs, request was made to him for renting more accommodation and he acceded to the request by renting more accommodation adjacent to the rented one on 06.05.1992 for which the defendant agreed to pay every month Rs.3,500/- as rent and Rs.40 as water charges. Giving details of the neighbourhood the plaintiff stated in the plaint that the defendant paid the rent only upto

05.04.1994 but thereafter did not pay rent for a period of 30 months upto 05.10.1996 and on account of her becoming defaulter in making payment of the due rent the plaintiff became entitled to get the premises vacated. According to the plaintiff, a sum of Rs.1,05,000/- remained due to the defendant alongwith water charges Rs.1200/-. It was further stated that the husband of defendant again started living with her and after consuming liquor in night used to create nuisance which gave him and his family members a great discord and was also a reason for getting the premises vacated. The plaintiff further averred that he demanded the rent time and again and asked the defendant to vacate the premises as well as given notice but the defendant did not reply to the notice rather filed a suit seeking relief not to be evicted without due process of law, which necessitated him to file the present suit. It was pleaded that the cause of action arose for the first time on 06.10.1994 when the rent became due for six months. The appellant claimed Rs.1,05,000 as arrears of rent and Rs.1200

for water consumption by the defendant.

As against this, defendant-respondent resisted plaintiff's claim by her written statement inter-alia contending that the plaintiff had not rented only one room, kitchen, store and verandah to her husband Rajendra but the whole premises in occupation was rented to her since the commencement of tenancy on 06.04.1990 on a monthly rent of Rs.1870/- It was denied that later on more accommodation was taken on rent and she also denied the rent having been increased to Rs.3,500/-. The defendant also refuted the allegation of her husband taking liquor and creating nuisance and stated that neither her relation with the husband were ever bad nor there was any clash between them. She further stated that after taking the premises on rent in that very month of April, she opened the school in the name of 'Jack & Jill' and the grand-son of the plaintiff was got admitted in Nursery Class in Section-A. The averments of plaintiff in respect of poor economic condition was denied and

she stated that there was no dispute between him and her husband. It was pleaded that for one room accommodation in the year 1990 a monthly rent of Rs.1870/- cannot be imagined even. The story of plaintiff about other premises being vacated on 06.05.1995 was disowned. As per defendant, on 06.04.1990 she had taken on rent three rooms, Varandah, kitchen, latrine and bathroom on a monthly rent of Rs.1870/- with water charges Rs.40/- per month, which were paid monthly but after 13.05.1991 the plaintiff did not issue any receipt for the payment of rent made for the period upto August 1996 and on 24.09.1996 threatened her to get the premises vacated through criminals, whereupon she filed a suit for permanent injunction in the Court of Civil Judge (Jr.Div.), Udaipur bearing No.343/96 which was decreed on 26.10.1996 in her favour and it was ordered that without adopting the legal procedure she be not dispossessed. The pleadings of plaintiff with regard to 30 months' due rent was denied so also default in payment of rent and water charges was

denied. It was stated that her husband had neither left the place nor returned back and the plaintiff in order to get the premises vacated made false allegation of creating nuisance. It was further stated that the plaintiff sent her an illegal notice showing the rent of the premises to be Rs.3500/- per month in order to harass and humiliate her taking the plea of reasonable and bonafide necessity of the premises for plaintiff's son, whereas the suit filed by him was not based on this ground, to which she replied through her Advocate Suresh Kumar and even after receipt of the reply he filed the suit on false grounds. The defendant prayed for dismissal of the suit with costs.

On the basis of the pleadings, the learned trial Court framed as many as six issues to the effect as mentioned hereinbelow:

(1) Whether the parties had agreed to increase the rent from Rs.1870 to 3500 per month on

06.05.1992 as per para No.7 of the plaint?

(2) Whether the defendant has not paid the rent after 05.04.1994 and has defaulted in payment of rent?

(3) Whether the plaintiff has also not paid the amount for water consumption @ Rs.40/- per month after 05.04.1994?

(4) Whether as per Para No.13 the defendant has created nuisance and on that basis the plaintiff is entitled to a decree?

(5) Whether an amount of Rs.1,05,000/- for rent and Rs.1200/- for water consumption was due to the plaintiff to be paid by the defendant on the date of filing of the suit?

(6) Relief?

From the side of plaintiff, Bherulal (PW1) plaintiff himself and witnesses PW2 Suresh Jain, PW3 Meethalal and PW4 Najar Singh presented themselves in evidence while from the side of defendant Tarulata (DW1) defendant herself and DW2 Jaskaran Singh, DW3 Rajendra Kumar and DW4 Gopal

appeared. Both parties have tendered some documents in evidence.

The contention of learned counsel for the appellant is that in the instant case the learned trial court has committed grave error of law while deciding issue No.1 and 4 against the plaintiff-appellant. According to learned counsel, it has been amply proved by the evidence that initially the premises was given on rent in the year 1990 and the rent was Rs.1870/- per month but subsequently in the year 1992 when one Deepak, who was residing in the house of the appellant, vacated the premises, the portion which he had vacated, was also taken on rent by the defendant-respondent and this factum has been proved by cogent evidence, therefore, finding arrived at on issue No.1 requires to be set aside. It has also been contended that issue No.4 was in relation of causing nuisance and in this connection, the plaintiff by his evidence has proved that defendant and her husband both were of quarrelsome nature.

Husband of defendant used to take liquor in night and thereafter used to create scene. It has also been contended that acts of the defendant and her husband made it impossible for the plaintiff to live in the house, therefore, issue No.4 was required to be decided in favour of the plaintiff-appellant and the suit for eviction was liable to be decreed.

On the other hand, it has been contended that the learned trial court has rightly disposed of the issues. It has also been contended that findings recorded are based on proper appreciation of the evidence, therefore, unless it is shown that the learned trial court has misread the evidence or the conclusions arrived at by the learned trial court while recording findings are based on conjectures and surmises and are against the record, till then the findings arrived at by the trial court require no interference. In relation to issue No.4, it has been contended that there is nothing on record to show that the defendant and

her husband were creating any nuisance. It has also been contended that the husband of the plaintiff is teetotaller and the allegation, which has been made, is absolutely false.

I have considered the above submissions made before me.

In the present case, it is to be seen that no challenge has been made in relation to Issues No.2, 3 and 5 as the above issues have been decided in favour of the plaintiff-appellant. The challenge has been made only in relation to issue No.1 and 4. No cross-objection has been filed by the defendant-respondent.

In view of above submissions, it is to be seen as to whether the trial court has correctly appreciated the evidence on issue No.1 and 4 or whether any interference is required to be made.

A suit for ejection and recovery of

arrears of rent was filed making mention in the plaint that in the year 1990 on a monthly rent of Rs.1870/- the rented premises was given to the husband of the defendant and subsequently on demand additional premises was given and rent was enhanced to Rs.3500/- per month. To prove that the rent was enhanced subsequently, the plaintiff has produced four witnesses. The evidence which has come on record, in brief, is to the effect that PW1 Bherulal plaintiff himself has stated that in the year 1990, the premises in question was given on rent and in the year 1992 on vacating a part of the premises by one Shri Deepak, it was given to the defendant after enhancing the rent from Rs.1870/- per month to Rs.3500/- per month. It has also been stated that at the time when the rent was enhanced Parsaram, Nazarsingh, Mitalal and other persons were present. Since, the defendant in the year 1994 stopped making payment of rent, it became essential for him to file a suit for default. He has stated that the husband of the defendant used to take liquor and used to create scene and that created

nuisance.

PW2 is Suresh Jain. He has stated that in his presence rent was increased. PW3 Mitalal stated that Deepak vacated one room and that was given to the defendant after enhancing the rent. PW4 Nazarsingh has also stated in the same manner as has been stated by PW3 Mitalal.

As against this, defendant DW1 Tarulata has stated that in the year 1990, the rent of the disputed premises was @ Rs.1870/- per month and the rent was never enhanced at any point of time. She has further stated that there were several tenants in the building. She has further stated that as the landlord wanted to evict them, therefore, she filed a civil suit for permanent injunction in the year 1996, and in that suit, it was stated that the rent of the disputed premises was only Rs.1870/- per month. She has also stated that in the proceedings which took place before the ADM under Section 107 and 116, there also the rent was stated

by her to be @ Rs.1870/- per month.

DW2 Jaskaran Singh has stated that in the rented premises since 1990 'Jack & Jill School' is being run and his son was also admitted in the year 1990, whose Admission Form Ex.A/14 has been proved. DW3 Rajendra Kumar has also stated that the rent was only Rs.1870/- per month and DW4 Gopal has also corroborated the statement of the defendant.

In view of above oral evidence, it appears that the plaintiff has tried to make out a case that after giving the premises on rent, the rent was enhanced, however, no documentary evidence is available on record to prove the factum of enhancement of rent. It has come in the cross-examination of the plaintiff that he was previously dealing in money lending. A person dealing in money lending obviously maintains account. It is not disputed that so many persons including defendant were living in the building, then, it requires rent deed and others documents to be with the

landlord. One of the plaintiff's witnesses has stated that Deepak had vacated only one room that was subsequently given to the defendant. The case of the plaintiff is that two rooms and some other part was given after vacation of the premises by one Deepak. There appears variance in the statements of the plaintiff and the witnesses of the plaintiff.

It is further to be seen that the plaintiff though in his statement has stated that in presence of Parasram and others witnesses, rent was enhanced, however, this important aspect does not find mention in the plaint. This fact being of important nature, it ought to have been stated in the plaint. It only suggests that the plaintiff has stated so in order to strengthen his case that infact the rent was enhanced in the presence of other persons. It is further to be seen that in the year 1996 a suit for permanent ejection was filed and in that suit in the year 1996, the stand of the defendant was that the rent was only Rs.1870/- per

month. No evidence was produced to challenge the above aspect. In a case before the ADM, the defendant in her statement stated the rent to be not enhanced one. The relevant documents for the purpose of drawing inference that from very beginning after taking the premises on rent, the defendant started some school are available on record and it appears from the evidence that in the year 1990, boys and girls were admitted in the school of the defendant. It is also significant here to mention that grand-son of the plaintiff was also admitted in the school. The relevant document is Ex.A/1 which show that the grand-son of plaintiff was admitted in the year 1991 in the defendant's school. Ex.A/14 is Admission Form of DW2 Jaskaran's daughter. The above documents coupled with oral evidence, clearly suggest that there was nothing about ehnacement of the rent and whatsoever premises was given on rent in the year 1990 remained in possession of the defendant. The trial court has assigned cogent reasons for recording its findings. The plaintiff was not able

to prove issue No.1, which was in relation to enhancement of rent from Rs.1870/- to Rs.3500/- per month, therefore, the same was decided against the plaintiff. There appears no reason to record a different finding than the one arrived at by the learned trial court after appreciating the entire matter.

As regards Issue No.4 in relation to nuisance, the plaintiff in his statement has stated that the defendant's husband used to take liquor and thereafter used to create scene. There is no evidence of neighbourers or other persons available on record in this regard. The trial court has recorded its finding on this issue also against the plaintiff. I do not find any infirmity in the finding recorded by the trial court. Thus, the finding recorded on issue No.4 also appears to be reasonable and proper and based on cogent reasons.

In view of forgoing discussion, I am of the opinion that the trial court has committed no

error either of law or fact, while deciding issue No.1 and 4 against the defendant, and as such the appeal being devoid of merit is liable to be dismissed.

In the result, the appeal is dismissed.

(SATYA PRAKASH PATHAK)J.

/jpa